

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VINCENT CARLSON, *et al.*,

Case No. 1:05-CV-798

Plaintiffs,

v.

Hon. Richard Alan Enslen

LEPRINO FOODS CO.,

ORDER

Defendant.

/

This matter is before the Court to resolve Defendant Leprino Foods Company's Objection to United States Magistrate Judge Ellen S. Carmody's Report and Recommendation of July 25, 2006, which Report recommended the approval of a form notice and consent to sue form for potential collective action members.¹ Plaintiffs Vincent Carlson, *et al.* have opposed the Objections and ask the Court to approve the form notice recommended by the Magistrate Judge. Oral argument is unnecessary in light of the briefing and the lengthy transcript of the July 13, 2006 hearing.

This Court reviews pretrial orders of United States Magistrate Judges to determine whether such orders are "clearly erroneous or contrary to law." *See* 28 U.S.C. § 636(b)(A). Otherwise, dispositive rulings are made by Report and Recommendation and reviewed *de novo*. *See* 28 U.S.C. § 636(b)(1)(B). No standard of review case law is cited in the Objections. Because the Court recognizes that a ruling on the notice has the potential for a disposition of claims in this suit, the Court agrees with the implicit suggestion of the Report that this review should be conducted *de novo*.

¹Plaintiffs Vincent Carlson, *et al.* have also moved for an expedited ruling on the Objections. The Court does make its' rulings promptly, though this was the Court's intention regardless of the request, since the Court desires the expeditious resolution of this controversy.

Upon such review, the Court determines that the Report should be adopted and the form notice approved for the reasons previously explained in the July 13, 2006 rulings of the Magistrate Judge and in Plaintiffs' Response to the Objections.

There are three Objections. The first Objection is that the Court should not include a case caption in the form notice because it might be construed by some readers as implicitly endorsing the notice and lawsuit. This argument is based on unpersuasive authority, *Gerlach v. Wells Fargo & Co.*, No. C 05-0585 CW, 2006 WL 824652 (N.D. Cal. Mar. 28, 2006), that is not binding in this Circuit and is not well reasoned. It is true that the Court must avoid the appearance of judicial endorsement. *See Hoffman-LaRoche v. Sperling*, 493 U.S. 165, 174 (1989). However, the form notice accomplishes this objective by including a sufficient disclaimer statement. The use of the caption is important so that readers will not confuse this notice with junk mail (which is unfortunately abundant). Accordingly, the use of the caption is approved. The second and third Objections ask for a form notice which excludes more workers, based on the Department of Labor ("DOL") release and the new company policy. These Objections were already implicitly, if not explicitly, rejected by the language of footnote 4 on page 10 of the Court's June 30, 2006 Opinion (observing that workers may have claims arising after the effective dates of the DOL release, notwithstanding the new policy). Also, the Court approves the general approach taken by the Magistrate Judge—*i.e.*, if there are disagreements about the disposition of claims, they should be reserved for summary judgment briefing and notice given to potential suitors to participate if they wish to participate. Another reason for the denial of these Objections are that there is disputed testimony about the sufficiency of the new changing policy. (*See* Resp. 4, n.2, citing testimony.)

THEREFORE, IT IS HEREBY ORDERED that Defendant Leprino Foods Company's Objections (Dkt. No. 73) are **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation of July 25, 2006 (Dkt. No. 72) is **ADOPTED** and the form notice and consent to sue forms attached thereto are **APPROVED**.

IT IS FURTHER ORDERED that the Motion to Expedite Ruling (Dkt. No. 78) is **GRANTED** to the extent that the parties regard this as a prompt ruling on the Objections.

DATED in Kalamazoo, MI: /s/ Richard Alan Enslen
August 15, 2006 RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE